



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

SEP 27 2019

**MEMORANDUM**

**SUBJECT:** Notice of Citizen Suit Against Violating Facility – Gayle Baker, Donald J. Brunelle, Judith A. Brunelle (Complainants”) v Mortgage of America Lenders, LLC’s (“Mortgage of America”) Regarding NPDES Permit GAR1000002 and No. GAR 1000003 located in St. Simons Island, GA.

**FROM:** Patricia Bullock, Regional Hearing Clerk *P.B.*  
Office of General Law, Criminal and Cross Office Support

**TO:** Scott Gordon, Deputy Director  
Enforcement and Compliance Assurance Division

Attached is an Intent to Sue dated **September 25, 2019**, submitted by Butler Snow on behalf of listed individuals. Notice is given pursuant to 505(b) of the Federal Water Pollution Control Act (“Clean Water Act”), 33 U.S.C. § 136 Sections 301(a), 401, 402 and 404. The Sixty-day notice period expires on **November 25, 2019**.

The letter gives notice of intent to file suit against above defendant failed to adequately install and maintain perimeter controls and sediments barriers located in St. Simons Island, GA. Allegedly, defendant failed to protect natural resource areas with barriers or other similar Best Management Practices.

Please review the attachments and any information you may have regarding the alleged violations. After your review, please provide a copy of your recommendation to the attention of Patricia Bullock, Office of General Law, Criminal and Cross Office Support, **by November 12, 2019**. If you need to further discuss this notice; please contact Kavita Nagrani, Office of Water Legal Support at (404) 562-9697.

Attachments (2)

**Cc:** Mita Ghosh/Kavita Nagrani  
Susan Hansen/Matt Hicks/Bill Bush  
Alicia Daniels-Lewis



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**MEMORANDUM**

**SUBJECT:** Notice of Citizen Suit Against Violating Facility – Gayle Baker, Donald J. Brunelle, Judith A. Brunelle (Complainants”) v Mortgage of America Lenders, LLC’s (“Mortgage of America”) Regarding NPDES Permit GAR1000002 and No. GAR 1000003 located in St. Simons Island, GA.

**FROM:** Scott Gordon, Deputy Director  
Enforcement and Compliance Assurance Division

**TO:** Patricia Bullock, Regional Hearing Clerk  
Office of General Law, Criminal and Cross Office Support

**CITIZEN SUIT DEFENDANT:** Mortgage of America

**STATUTE:** CWA

**RECOMMENDATION:**

1. Initiate federal enforcement action: \_\_\_\_\_
2. Take no action at this time (state reason): \_\_\_\_\_
3. Other: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Cc: Mita Ghosh  
Kavita Nagrani

# BUTLER | SNOW

September 20, 2019

Charles A. Dorminy, Esq.  
Hall Booth Smith, P.C.  
3528 Darien Highway, Suite 300  
Brunswick, GA 31525

Region 4 - RA's Office

SEP 25 2019

Received

Dargan Scott Cole, Sr., Esq.  
Hall Booth Smith, P.C.  
191 Peachtree Street, Suite 2900  
Atlanta, GA 30303-1775

RE: Notice of Intent to Sue for Violations of Clean Water Act

Dear Mr. Dorminy and Mr. Cole,

This letter is submitted on behalf of the Gayle Baker, Donald J. Brunelle, Judith A. Brunelle, Jane Fraser, Burke McCall Harrison, Vicki S. Harrison, Judith C. Philips, Robert W. Williamson, III and Renee J. Williamson (hereinafter collectively referred to as "Complainants") whom are owners of real property who have and will continue to suffer environmental harm caused by Mortgage of America Lenders, LLC's (hereinafter "Mortgage of America") failure to comply with provisions of the Federal Water Pollution Control Act. This letter serves as a sixty-day notice under the citizen suit provision of the Federal Water Pollution Control Act, 33 U.S.C. § 1365 ("Clean Water Act"). This letter communicates the intent of the Complainants to sue Mortgage of America for violations of Sections 301(a), 401, 402 and 404 of the Clean Water Act related to the construction project known as Captain's Cove Subdivision (hereinafter "Captain's Cove").

## I. INTRODUCTION

Mortgage of America is the owner of Caption's Cove, an 11.26 acre residential subdivision in St. Simons Island, Glynn County, Georgia. Storm water runoff from Captain's Cove flows into wetlands and into a retention pond which the United States Army Corps of Engineers ("USACE") has determined to be waters of the United States.

On March 7, 2017, the USACE authorized Mortgage of America's request to use Nationwide Permits ("NWP") 14 and 18 for impacts to wetlands for construction of Captain's Cove. NWP 14 permitted the construction of the access road and NWP 18 permitted the fill of less than 0.5 acres of wetlands around Detention Pond A for the development of four (4) lots.

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On April 10, 2107, Mortgage of America submitted a Notice of Intent for Coverage under the 2013 Re-Issuance of the State of Georgia's NPDES General Permit to Discharge Storm Water Associated with Construction Activity. On August 14, 2017, Mortgage of America submitted to the Georgia Department of Natural Resources Environmental Protection Division its storm water management report confirming that Detention Pond A was jurisdictional wetlands and therefore waters of the United States. Beginning in January 2018 and continuing throughout the entire year, Mortgage of America's own consultant submitted NPDES Inspection Reports noting the failure of Mortgage of America to protect natural resources areas, such as wetlands, with barriers or other similar BMPs; and failed to adequately install and maintain perimeter controls and sediment barriers. On March 6, 2018, Glynn County issued a Notice to Comply for violations of the Glynn County Erosion and Sediment Control Ordinance. On March 19, 2018, Glynn County issued a Stop Work Order to Mortgage of America stating that the lack of BMPs was an "eminent threat" to waters of the State and the United States. Again on March 29, 2018, Glynn County issued another Stop Work Order to Mortgage of America for violations of the Glynn County Erosion and Sediment Control Ordinance. On April 12, 2018, Glynn County notified Mortgage of America that they were still not in compliance with the Glynn County Erosion and Sediment Control Ordinance.

Mortgage of America's own inspection reports state that they are continuously out of compliance with the NPDES General Permit. (See Collective Attachment A, NPDES Site Inspection Reports dated, June 1, 2018, June 8, 2018, June 15, 2018, October 26, 2018, November 9, 2018, November 16, 2018, November 21, 2018, November 26, 2018 and November 30, 2018).

## II. VIOLATIONS OF CLEAN WATER ACT

### A. Discharge of Pollutants into Waters of the United States Without Permit

Section 301(a) of the Clean Water Act states: "Except as in compliance with this section and sections 1312, 1316, 1317, 1328, 1342, and 1344 of this title, the discharge of any pollutant by any person shall be unlawful." 33 U.S.C. § 1311(a). Each violation of the permit – and each discharge that is not authorized by the permit – is a violation of the Clean Water Act.

Under the Clean Water Act, the term "pollutant" is broadly defined to include, "dredged spoils, solid waste, incinerator residue, sewage garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste." 33 U.S.C. § 1362(6).

The Clean Water Act defines a "point source" as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container .... From which pollutants are or may be discharged." 33 U.S.C. § 1362(14); *see also Parker v. Scrap Metal Processors, Inc.*, 386 F.3d 993, 1009 (11th Cir. 2004). In addition, a "point source" need not be the original source of the pollutant; "it need only convey the pollutant to 'navigable waters.'" *S. Fla. Water Mgmt. Dist. v. Miccosukee Tribe of Indians*, 541 U.S. 95, 105 (2004); *accord W. Va. Highlands Conservancy v. Huffman*, 625 F.3d 159, 168 (4<sup>th</sup> Cir. 2010) (permits are required for discharges from point sources that "merely convey

pollutants to navigable waters"). This would also include any unintentional conveyance of pollutants, for example through naturally-formed ditches, gullies or pipes that allowed pollutants to be discharged. See *N.C. Shellfish Growers Ass'n v. Holly Ridge Assocs., LLC*, 278 F. Supp. 2d 654, 678 (E.D. N.C. 2003) ("Notwithstanding that it may result from such natural phenomena as rainfall and gravity, the surface run-off of contaminated waters, once channeled or collected, constitutes discharge by a point source.")

In Mortgage of America's September 22, 2015 Storm Water Management Report – Captain's Cove Subdivision, Section II. 4. titled "Detention Pond Stage VS Storage and Outlet Structure Information," Mortgage of American defines three (3) distinctive retention ponds to collect and retain storm water; however only one retention pond was actually constructed on site. The storm water from the constructed retention pond is conveyed through a pipe and is discharged directly to wetlands. This unauthorized discharge consists of "pollutants." The unauthorized discharge include the detention pond's emergency overflow weirs and pipes which empties without a permit into wetlands that are waters of the United States and of Georgia.

**1. *Unauthorized Discharge from Detention Pond A into Waters of the United States Without a Permit***

As stated in the September 22, 2015 Storm Water Management Report, storm water containing pollutants are being discharged from Detention Pond A, a point source, into Basin 2. The Storm Water Management Report defines Basin 2 to be wetlands and thus waters of the United States.

**Detention Pond A**

Detention Pond A is the largest of the storm water management facilities and is located in **Basin 3** as shown on **EXHIBIT C**. The outlet structure (OS-H6) consists of a riser box with an 8-inch diameter orifice as the primary flow control device. A one-foot rectangular weir is provided as a back-up flow control device and the riser box is drained by a 12-inch diameter pipe. The pond discharges to **Basin 2** through Pipe System H. Elevation vs outflow data for this flow control device is shown in the following Table.

\* \* \* \* \*

**Basin 2**, consisting of two (2) sub-basins, is tributary to a wetland area located along Frederica Road. This wetland area is drained by an existing conveyance system consisting of a grate inlet and a 24" RCP culvert under Frederica Road where it discharges to an existing drainage ditch. This system continues to drain to the west into a lake system in the Sea Palms West Development.

Storm water runoff from **Sub-Basin 2A** (0.26 acres) sheet flows to the southwest onto lands N/F owned by James M. Wilson, J. A. Jones, Charles E. and Sloan H. Molloy, and Mark V. Starr eventually making its way west into the aforementioned wetland area adjacent to Frederica Road. Elevations range from 14.83 along the ridge lines between **Basins 2 and 3** to 12.94 just off site. *The proposed storm water management system will eliminate this sheet flow discharge.*

Storm water runoff from *Sub-Basin 28* (1.56 acres) sheet flows to the southwest into the aforementioned wet land area adjacent to Frederica Road. Elevations range from approximately 15.39 along the ridge lines between *Basins 1 and 2* to 7.87 in the lowest portion of the wetland area.

(See Attachment A, 9/22/15 Storm Water Management Report at pp. 10-11, 5).

The unauthorized discharge of pollutants from Detention Pond A into wetlands or waters of the United States without a permit is an on-going violation of the Clean Water Act Section 301(a).

**2. *Unauthorized Discharge from Detention Pond A in Violation of Section 301(a) and 302 of Clean Water Act***

In the August 14, 2017 Storm Water Management Report, Mortgage of America modified the design of Detention Pond A to a “no-discharge” pond.

Detention Pond(s) was designed using **Hydrology Studio 2016 V2.0.0.41**. Storage volume will be sufficient to contain the 100-year 24-hour storm event. The pond (converted borrow pit) is a jurisdictional wetland area and supporting calculations indicate no discharge from this pond under post-development conditions assuming an existing water surface elevation of approximately 7.0. Nonetheless, an outlet structure has been provided with an 8-inch orifice set at invert elevation 9.50 as the primary flow control device. This is the starting water surface elevation used in the routing calculations. An emergency overflow weir is provided at elevation 11.00. Any discharge from this outlet structure will be routed to the jurisdictional wetland area to the north in Basin A. Exposed pond bank slopes will have a maximum slope of 3:1.

(See Attachment B, 8/14/17 Storm Water Management Report at p. 9).

The outlet structure was installed with construction equipment and the discharge pipe, an unauthorized point source, allows for the discharge of water and pollutants from the retention pond in violation of the Clean Water Act §§ 301(a), and 302.

**B. Unauthorized Discharge of Dredge or Fill Material into Waters of the United States By Removing Vegetation From the Retention Pond**

Section 301(a) of the Clean Water Act provides that it shall be unlawful for any person to discharge any pollutant except in compliance with this section and section 1312, 1316, 1317, 1328, 1342 and 1344 of the Clean Water Act. 33 U.S.C. § 1311(a). Specifically, Section 301 of the Clean Water Act generally prohibits the discharge of pollutants into waters of the United States, except in accordance with the requirements of one of the two permitting programs established under the Clean Water Act: Section 404, which regulates the discharge of dredged or fill material; and Section 402, which regulates all other pollutants under the NPDES program. Section 404 is primarily administered by the USACE.

The term “Fill Material” is defined in 33 CFR § 232.2 means “material placed in water of the United States where the material has the effect of: (i) Replacing any portion of a water of the United States with dry land; or (ii) Changing to bottom elevation of any portion of a water of the United States.” 33 CFR § 232.2(1). The regulations further provide examples of what constitutes “fill material” to include, but not limited to: “rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in the waters of the United States.” *Id.* at § 232.2(2).

On December 15, 2016, Mr. Ron Sluder submitted to the USACE a request for a Jurisdictional determination for Captain’s Cove. The project was assigned number SAS-2014-00615. Based upon the Jurisdictional Determination by the USACE, the entire 1.530 acres of the Detention Pond A (Borrow Pit) are wetlands. (See Attachment D at page 8). In Storm Water Management Report dated August 14, 2017, Mortgage of America states “The pond (converted borrow pit) is a jurisdictional wetland areas.” (See Attachment C, 8/14/17 Storm Water Management Report at page 9). As a result, any discharge of fill material into or from Detention Pond A without a permit would be a violation of Clean Water Act §§ 301(a) and 404.

On July 27, 2018, Mr. James Holland captured the following photos (A and B) of Detention Pond A. The photos clearly show that Detention Pond A has trees and vegetation growing in the pond. However, in picture C dated December 18, 2018, all vegetation and overburden was removed.

Photo A – Dated July 27, 2018





Photo B – Dated July 27, 2018



Photo C – Dated December 18, 2018





Mortgage of America admits in the August 14, 2017 Storm Water Management Report that Detention Pond A (converted borrow pit) is a jurisdictional wetland. In addition, the Storm Water Management Report states that the depth of the pond is seven (7) feet and that the exposed pond bank slopes will have a maximum slope of 3:1; thereby acknowledging that overburden was removed from waters of the United States and that construction activities occurred within waters of the United States outside of the permitted work under NWP 18.

Moreover, on September 11, 2018, Mr. Stacy Culbreath, the Assistant County Engineer for Glynn County, sent an email to Mr. Ron Sluder with the caption of "Captions Cove". In the email, Mr. Culbreath states:

We were wanting to know if there was any way you could get into the detention pond for captains cove and clean it out. It is our understanding that it will be a detention pond/amenity for the subdivision and would love for it to cleaned out.

It is our understanding that this may be waters of the state and the Corps of Engineers may have authority over the pond and if that is the case, then they will have to give final sign off on cleaning out the pond.

(See Attachment D, 9/11/18 email from Stacy Culbreath).

Based upon the dates of the photos above, it was not until after the email from Glynn County that Mortgage of America "cleaned out" or removed the overburden within Detention Pond A. At this time, Mortgage of America knew or should have known that the entire area of Detention Pond A were jurisdictional waters of the United States and that a permit from the USACE was required prior to conducting any work in Detention Pond A. Mortgage of America, without authorization or a permit from the USACE, removed the vegetation and overburden from Detention Pond A in violation of the Clean Water Act. In addition, Mortgage of America filled waters of the United States in violation of the Clean Water Act by changing the bottom elevation of waters of the United States. This is a continuing and on-going violation.

**C. Unauthorized Discharge of Fill Material into Waters of the United States By Construction of the Weir.**

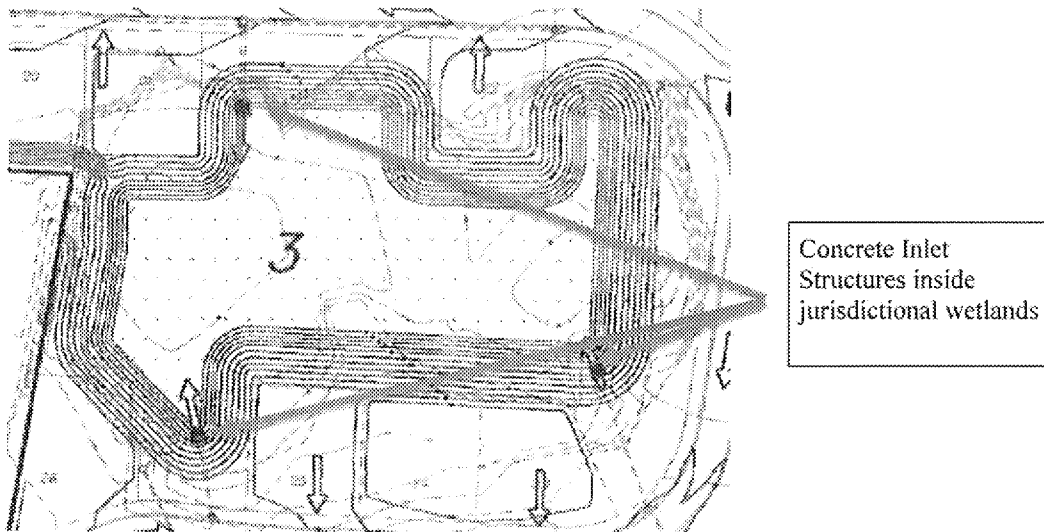
Section 404 of the Clean Water Act allows an applicant to obtain a permit to dredge and fill waters of the United States. 33 U.S.C. § 1344. "Compliance with a permit issued under [Section 404] . . . shall be deemed compliance, for purposes of [Citizen Suits under Section 505(a)], with [Section 301(a) of the Clean Water Act]. 33 U.S.C. § 1344(p). The construction of an emergency weir within Detention Pond A is a violation of the Clean Water Action Sections 301(a), 401, 402 and 404.

**1. Construction of Storm Water Drainage Structures in Jurisdictional Wetland Without a Permit**

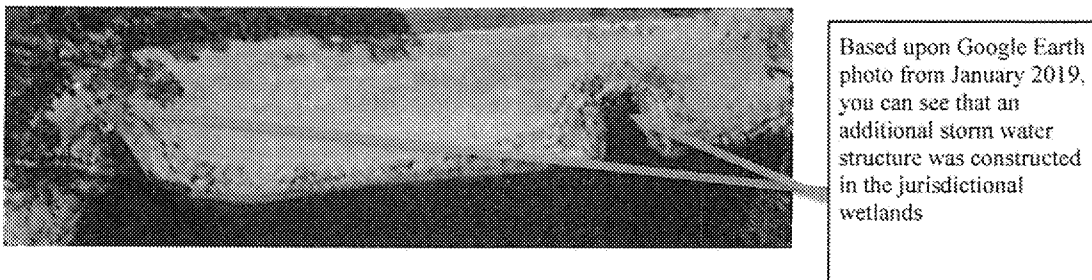
On March 7, 2017, the USACE issued a letter to Mr. Ron Sluder, Mortgage of America, authorizing the proposed construction activities at Captain's Cove under NWP 14 Linear Transportation Projects and NWP 18 Minor Discharges. The USAC conditioned approval upon several provisions, including:

*e. You shall install and maintain erosion and sediment control measures in upland areas of the project site.... The permit does not authorize installation of check-dams, weirs, riprap, bulkheads or other erosion control measures in streams, wetlands or other waters of the United States. Authorization would be required from the U.S. Army Corps of Engineers prior to installing any erosion control measures in waters of the United States.*

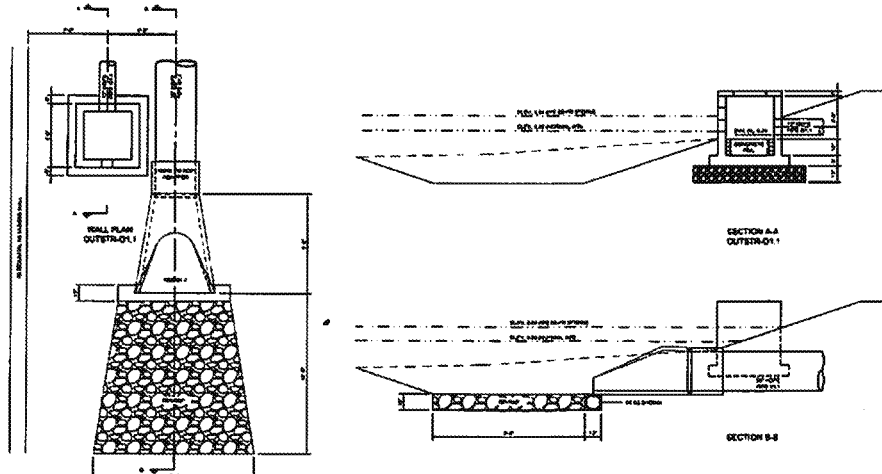
(See Attachment C, 3/7/17 letter from USACE (emphasis added)).



The above picture from the Captain's Cove Storm Water Report regarding Site Construction Plans Phases 1 and II show three (3) concrete inlet structures to allow storm water from the surrounding area to drain into Detention Pond A.



In addition the below picture shows the construction plans for the storm outlet structures constructed within Detention Pond A. The construction drawings show a concrete structure with pipe and rip-rap being installed within the jurisdictional wetlands. This violates the Clean Water Act.



## 2. Construction of Emergency Overflow System in Jurisdictional Wetlands without a Permit

The construction of the emergency overflow system violates the Clean Water Act by placing pollutants into waters of the United States without acquiring both a 401 or 404 permit prior to construction. The associated piping are constructed of concrete, sand, rock, metal and/or plastic, all of which are considered pollutants under the Clean Water Act, thereby violating Sections 301(a), 401 and 404 of the Clean Water Act. Second, the construction of the emergency overflow systems constitutes a placement of dredged or fill materials in waters of the United States by replacing a portion of a water of the United States with dry land and/or raising the bottom elevation of that water, thereby violating Section 301(a), 401 and 404 of the Clean Water Act. The discharge from the emergency overflow weir constitutes a violation of the Clean Water Act for failing to obtain a NPDES discharge permit or 401 or 404 permits. Finally, the construction of the weir violates provisions of the NWP issued by the USACE.

As stated above, the USACE's March 7, 2017 letter authorizing the proposed construction activities at Captain's Cove under NWP 14 Linear Transportation Projects and NWP 18 Minor Discharges conditioned approval as follows:

*e. You shall install and maintain erosion and sediment control measures in upland areas of the project site.... The permit does not authorize installation of check-dams, weirs, riprap, bulkheads or other erosion control measures in streams, wetlands or other waters of the United States. Authorization would be required from the U.S. Army Corps of Engineers prior to installing any erosion control measures in waters of the United States.*

(See Attachment C (emphasis added)).

In the August 14, 2017 Storm Water Management Report, Mortgage of American states that an emergency overflow weir was constructed within Detention Pond A.

approximately 7.0. Nonetheless, an outlet structure has been provided with an 8-inch orifice set at invert elevation 9.50 as the primary flow control device. This is the starting water surface elevation used in the routing calculations. An emergency overflow weir is provided at elevation 11.00. Any discharge from this outlet structure will be routed to the jurisdictional wetland area to the north in Basin A. Exposed pond bank slopes will have a maximum slope of 3:1.

(See Attachment B at p. 9).

The construction of a weir within jurisdictional waters of the United States is an ongoing and continuous violation of the NWP 18 provision (e) and is also a violation of the Clean Water Act §§ 301(a), and 404 for the discharge of pollutants without a permit.

**D. Violation of the Clean Water Act Section 402**

Section 402 of the Clean Water Act prohibits the discharge of any pollutant to waters of the United States from a point source unless the discharge is authorized by a National Pollutant Discharge Elimination System (NPDES) permit or 404 permit. The State of Georgia has delegated authority from the United States Environmental Protection Agency ("USEPA") to issue NPDES permits for the State of Georgia. See O.C.G.A. §§ 12-5-29 and 12-5-30. The State of Georgia issued General NPDES Permits No. GAR 100001, No. GAR100002 and No. GAR 100003 as general permits for stand-alone, infrastructure and common development construction sites. These permits allow developers to discharge storm water under certain permitted conditions.

**1. *Discharge of Storm Water and Pollutants from a No-Discharge System***

Mortgage of America applied for coverage under the State of Georgia general storm water permit for the construction of Captain's Cove. However, the storm water plan submitted by Mortgage of America states that Detention Pond A is designed as a "no-discharge" system.

#### **4. DETENTION POND STAGE VS STORAGE AND OUTLET STRUCTURE INFORMATION**

Detention Pond(s) was designed using Hydrology Studio 2016 V2.0.0.41. Storage volume will be sufficient to contain the 100-year 24-hour storm event. The pond (converted borrow pit) is a jurisdictional wetland area and supporting calculations indicate no discharge from this pond under post-development conditions assuming an existing water surface elevation of approximately 7.0. Nonetheless, an outlet structure has been provided with an 8-inch orifice set at invert elevation 9.50 as the primary flow control device. This is the starting water surface elevation used in the routing calculations. An emergency overflow weir is provided at elevation 11.00. Any discharge from this outlet structure will be routed to the jurisdictional wetland area to the north in Basin A. Exposed pond bank slopes will have a maximum slope of 3:1.

#### **6. EMERGENCY OVERFLOW CALCULATIONS**

In as much as the ponds contain the 100-year storm event, no overflow calculations are required.

(See Attachment B).

Mortgage of America has not and currently is not operating the retention pond as a “no-discharge” system as stated in the storm water management report. The water level in the pond is routinely over the top of the emergency weir; thereby creating a continuous discharge of storm water and pollutants into waters of the United States in violation of the NPDES permit.

#### **2. *Failure to Protect Wetland***

The NPDES Site Inspection Reports for Captain’s Cove dated June 1, 2018 and June 4, 2018 show that Mortgage of America failed to properly implement or maintain Best Management Practices (“BMPs”) to prevent or minimize erosion and sedimentation run-off from the subdivision. (See Collective Attachment E, NPDES Site Inspection Reports dated, June 1, 2018, June 8, 2018, June 15, 2018, October 26, 2018, November 9, 2018, November 16, 2018, November 21, 2018, November 26, 2018 and November 30, 2018). The NPDES Site Inspection Reports dated November 9, 2018, November 16, 2018, November 21, 2018, November 26, 2018 and November 30, 2018 show that Mortgage of America failed to properly protect natural resource areas, such as wetlands, with adequate BMPs. (*Id.*) The failure of Mortgage of America to properly install BMPs resulted in pollutants being discharged into waters of the United States in violation of the Clean Water Act. These pollutants, including dirt, soil, rocks, debris and sand remain in waters of the United States and until properly remediated continue to be a violation of the Clean Water Act Section 402 and 404.

#### **E. Violation of the Clean Water Act Section 404**

As previously stated, Section 404 of the Clean Water Act allows an applicant to obtain a permit to discharge dredged and fill materials into waters of the United States. 33 U.S.C. § 1344. “Compliance with a permit issued under [Section 404] . . . shall be deemed compliance, for

purposes of [Citizen Suits under Section 505(a)], with [Section 301(a) of the Clean Water Act]. 33 U.S.C. § 1344(p).

The USACE's letter to Mortgage of America authorizing the proposed construction activities at Captain's Cove under NWP 14 Linear Transportation Projects and NWP 18 Minor Discharges expressly conditioned these Permits upon several provisions, including:

c. You shall obtain and comply with all appropriate federal, state and local authorizations required for this type of activity.

d. All work conducted under this permit shall be located, outlined, designed, constructed, and operated in accordance with the minimal requirements of the Georgia Erosion and Sedimentation Control Act of 1975, as amended.

(See Attachment C at p. 2).

**1. *Violation of provision "c" of NWP 14 and 18***

Mortgage of America continues to violate the Glynn County Erosion and Sedimentation Control Ordinance, thereby violating provisions of the Clean Water Act. On March 19, 2018, Glynn County issued a Stop Work Order to Mortgage of America for violation of the Glynn County Erosion and Sedimentation Control Ordinance. (See Attachment F, 3/19/18 Stop Work Order). Specifically, the Stop Work Order noted deficient BMPs regarding silt fencing. In addition, Mortgage of America constructed erosion and sedimentation control devices within waters of the United States. Mortgage of America continues to violate the Glynn County Erosion and Sedimentation Control Ordinance by failing to properly maintain erosion and sedimentation control devices throughout Captain's Cove.

**2. *Violation of provision "d" of NWP 14 and 18***

- a. Mortgage of America continues to violate provisions of the Georgia Erosion and Sedimentation Control Act by failing to properly maintain erosion and sedimentation control devices throughout the entire subdivision.
- b. Mortgage of America continues to violate Georgia Water Quality Control Act by continually discharging storm water and pollutants from Detention Pond A, which is permitted as a "no-discharge" storm water facility.

**F. Violation of the Clean Water Act Section 401 Permit**

Section 401 of the Clean Water Act requires that any applicant prior to obtaining any federal permit must obtain a water quality certification from the State where the project will be constructed. This is commonly referred to as a Section 401 Water Quality Certification. Section 401(a) of the Clean Water Act specifically states:

(1) Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharges will comply with the applicable provisions of section 1311, 1312, 1313, 1316, and 1317 of this title.

33 U.S.C. § 1341(a)(1).

Because 401 Water Quality Certification is required prior to the issuance of any permit under the Clean Water Act, each violation of sections 301(a), 402 and 404 are violations of Section 401. As a result, Mortgage of America has and continues to violate Section 401 of the Clean Water Act for the following activities as outlined above and listed again below:

1. ***Failure to obtain a 401 Permit for unauthorized discharges of pollutants from Detention Pond A.***
2. ***Failure to obtain a 401 Permit for unauthorized discharges from Detention Pond A in violation of the "No-Discharge" designation of Detention Pond A.***
3. ***Failure to obtain a 401 permit for the unauthorized fill of material from Detention Pond A by removing overburden and vegetation and by lowering the elevation of Waters of the United States in Detention Pond A.***
4. ***Failure to obtain a 401 permit for the construction of an emergency weir in Waters of the United States, in particular, the construction of storm water inlet weirs in Detention Pond A.***
5. ***Failure to obtain a 401 permit for the construction of an emergency weir in Waters of the United States, in particular, the construction of emergency overflow system in Detention Pond A.***

### **III. POTENTIAL LITIGATION: INTENT TO SUE**

This letter is based on publicly available information. Additional information, including information in Mortgage of America's possession, custody or control may reveal other violations. This letter only addresses publicly identifiable violations related to Mortgage of America's continued failure to comply. This letter does not preclude Complainants from making any additional claims.



Because Complainants intend to sue Mortgage of America under the Clean Water Act, Mortgage of America is legally required to preserve and not to destroy any information, electronically stored information, or documents that are relevant to the allegations set forth above, including, but not limited to, environmental data, construction documents, contract documents, monitoring documents, enforcement documents, regulatory filings, business plans, emails and other electronically stored information, communications, photographs, videos, invoices, bills, and documents sent to or obtained from third parties hired by Mortgage of America. Mortgage of America's documents shall be preserved immediately to avoid spoliation.

#### **IV. IDENTITY AND ADDRESS OF PARTY GIVING NOTICE**

##### **A. The Complainants**

1. Gayle Baker is the owner of real property located at 127 Daufuski Lane and 131 Daufuski Lane, St. Simons Island, Glynn County, Georgia, 31522. Ms. Baker resides at [REDACTED]
2. Donald J. Brunelle and Judith A. Brunelle are the owners of real property located at and reside at [REDACTED]
3. Jane Fraser is the owner of real property located at 165 North Harrington Road, St. Simons Island, Glynn County, GA 31522. Ms. Fraser resides at [REDACTED]
4. Burke McCall Harrison and Vicki S. Harrison are the owners of real property located at and reside at [REDACTED]
5. Judith C. Phillips is the owner of real property located at and resides at [REDACTED]

##### **B. Contact Information**

The Complainants contact information is listed above. Their counsel's contact information is:

Michael I. Less  
Melody McAnally  
Butler Snow, LLP  
6075 Poplar Avenue, 5th Floor  
Memphis, Tennessee 38119  
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Michael Caples  
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(601) 948-5711

E. Righton Johnson Lewis  
Butler Snow, LLP  
1170 Peachtree Street NE, Suite 1900  
Atlanta, GA 30309  
(678) 515-5000

**V. CONCLUSION**

The Complainants hope Mortgage of America will take prompt action to remedy the violations identified in this notice letter and to come into full compliance with the Clean Water Act. Please direct all communications to the undersigned counsel via the addresses and telephone numbers above.

Sincerely,

BUTLER SNOW LLP



Melody McAnally

cc: Andrew Wheeler  
EPA – Office of Administrator  
USEPA Headquarters  
William Jefferson Clinton Building  
1200 Pennsylvania Ave., NW  
Mail Code 1101A  
Washington, DC 20460

Mary Walker  
Acting Administrator  
U.S. EPA Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, GA 30303

September 20, 2019

Page 16

Richard E. Dunn  
Georgia Department of Natural Resources  
Environmental Protection Division  
2 Martin Luther King Jr. Dr.  
Suite 1456, East Tower  
Atlanta, GA 30334

Colonel Daniel Hibner  
Savannah District Commander  
U.S. Army Corps of Engineers  
100 W. Oglethorpe Avenue  
Savannah, GA 31401

Lieutenant General Todd T. Semonite  
U.S. Army Corps of Engineers  
441 G Street NW  
Washington, DC 20314-1000

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

**MEMORANDUM**

**SUBJECT:** Notice of Citizen Suit Against Violating Facility – Gayle Baker, Donald J. Brunelle, Judith A. Brunelle (“Complainants”) v Mortgage of America Lenders, LLC’s (“Mortgage of America”) Regarding NPDES Permit GAR 1000002 and No. GAR1000003 located in St. Simons Island, GA.

**FROM:** Scott Gordon, Deputy Director *J. St CL*  
Enforcement and Compliance Assurance Division

**TO:** Patricia Bullock, Regional Hearing Clerk  
Office of General Law, Criminal and Cross Office Support

**CITIZEN SUIT DEFENDANT:** Mortgage of America Lenders, LLC’s

**STATUTE:** CWA

**RECOMMENDATION:**

1. Initiate federal enforcement action: ☐ Enforcement Action Taken ☐
2. Take no action at this time (state reason): ☐
3. Other: ☐

Gayle Baker, Donald J. Brunelle et.al. (Complainants) allege that Mortgage of America Lenders, LLC (the Company), the owner of a residential subdivision named Captain’s Cove in St. Simons Island, Georgia, is out of compliance with their NPDES Construction Stormwater General Permits (the Permits). The Complainant’s allege that a pond in the center of the subdivision is a wetland and the Company is allowing sediment to enter the pond or waters of the State.

The Georgia Environmental Protection Division (EPD) conducted an inspection of the site on December 28, 2018 with Glynn County, the Local Issuing Authority and primary regulator for the site. EPD stated that the pond was an old sand mine that was later used as a small landfill by the local residents. At the time of the inspection, the site was in compliance with the majority of the requirements of the Permits except for not having a construction exit.

On January 8, 2019, the U.S. Army Corps of Engineers (the Corps) conducted a site inspection and observed discharges of dredged and/or fill material into the pond in question which was determined to be waters of the United States. The Corps followed up with a Cease and Desist letter on January 25, 2019. A meeting between the Company, its representatives, the Corps, and the EPA was held on March 1, 2019 to discuss the alleged violations.

EPA Region 4 and the Company have agreed to a Consent Agreement and Final Order for the unauthorized discharges of dredged and/or fill material into waters of the United States and for operating without a Section 404 permit. A public notice was posted on October 11, 2019, and the public has thirty days to provide comments.

Name: Humberto Guzman

Title: Community Liaison

Date: October 9, 2019

Cc: Mita Ghosh/Kavita Nagrani

## CWA Citizen Suit Notice

Date: 10/17/19

## ROUTING AND TRANSMITTAL SLIP

TO: (Name, office symbol, room number, building, Agency/Post)		Initials	Date
1.	H. Guzman	HAG	10-17-19
2.	J. Castillo	JCS	10-21-19
3.	G. Crump	GCR	10-22-19
4.	M. J. Bragan	MJB	10/22/19
5.	S. Gordon	SGR	10/23/19
6.	P. Bullock		
7.	Y. Moore/H. Guzman		

	Action	File	Note and Return
X	Approval	For Clearance	Per Conversation
	As Requested	For Correction	Prepare Reply
	Circulate	For Your Information	See Me
	Comment	Investigate	Signature
	Coordination	Justify	

From: (Name, org. symbol, Agency/Post)	Room No.—Bldg.
H. Guzman	Phone No. X28942

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions.

**REMARKS:** Notice of Citizen Suit Against Violating Facility – Gayle Baker, Donald J. Brunelle, Judith A. Brunelle ("Complainants") v Mortgage of America Lenders, LLC's ("Mortgage of America") Regarding NPDES Permit GAR 1000002 and No. GAR1000003 located in St. Simons Island, GA.

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November 19, 2019

Region 4 - RA's Office

VIA U.S. MAIL

NOV 22 2019

Received

Andrew Wheeler  
EPA – Office of Administrator  
USEPA Headquarters  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, N.W.  
Mail Code 1101A  
Washington, DC 20460

Mary Walker  
Acting Administrator  
U.S. EPA Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, GA 30303

RE: Gayle Baker, Donald J. Brunnelle et al. vs. Old Plantation Group, LLC, Palmetto Building Group, LLC, and Mortgage of America Lenders, LLC; Superior Court of Glynn County, State of Georgia  
CAFN: CE19-00671

Dear Mr. Wheeler and Ms. Walker:

Enclosed please find a copy of the following document in the above-referenced case:

- **Notice of Intent to Sue for Violations of the Clean Water Act**

Should you have any questions, please feel free to contact our office.

Sincerely,

Dominique James  
Legal Assistant to Dargan Scott Cole

dj/  
Enclosure

ATLANTA, GA

ALABAMA | FLORIDA | GEORGIA | NEW JERSEY | NORTH CAROLINA | SOUTH CAROLINA | TENNESSEE

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